

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DUNN

Mailed: July 19, 2005

Opposition No. 92041776

CATERPILLAR INC.

v.

PAVE TECH, INC.

Elizabeth A. Dunn, Attorney:

This case comes before the Board on petitioner's contested motion, filed June 10, 2005, to extend testimony periods to allow the July 19, 2005 testimony deposition of Kent Tisdale, and respondent's motion, filed July 18, 2005 to quash the notice of deposition of Mr. Tisdale.

Due to an inadvertence, the Board was unable to act promptly on petitioner's telephone requests to decide the motion to extend before the scheduled deposition. The Board regrets the inconvenience to the parties and, as set forth below, sets forth procedures to ensure the orderly completion of trial.

As background, the Board notes that this proceeding commenced February 25, 2003; that the Board approved a

series of consented motions to extend discovery and testimony periods; that on October 15, 2004, the Board granted petitioner's contested motion to extend discovery to permit depositions which the parties had been unable to schedule during discovery; and that on March 8, 2005, the Board approved the last consented motion to extend discovery to close March 15, 2005 and to extend petitioner's testimony period to close June 13, 2005.

MOTION TO EXTEND TESTIMONY PERIODS

In support of its June 10, 2005 motion to extend its testimony period for forty-five days to allow the July 19, 2005 testimony deposition of Kent Tisdale, petitioner alleges that Mr. Tisdale is General Construction Industry Division Manager for petitioner; that Mr. Tisdale leads the organization within petitioner responsible for ten product lines in North America; that three managers and their professional marketing staffs report to him; that Mr. Tisdale's responsibilities frequently require extensive travel; that Mr. Tisdale's previously-set schedule made him unavailable through the entirety of petitioner's testimony period; that Mr. Tisdale will be available for deposition in mid-July; that the difficulty in scheduling Mr. Tisdale's testimony deposition was discussed with respondent in April while the parties were completing

discovery; that completion of testimony by written questions was discussed but found not feasible insofar as it still would require time not available in Mr. Tisdale's schedule; that petitioner has not earlier asked for an extension of its trial period; and that petitioner has shown good cause for the grant of the extension.

In opposition to petitioner's motion to extend its testimony period, respondent alleges that petitioner has had ample time to prepare its case; that Mr. Tisdale's schedule does not constitute good cause for extension; that petitioner could have sought alternate witnesses to provide the desired testimony; that petitioner has provided no reason why it did not submit its notices of reliance within the original testimony period; and that petitioner's motion does not demonstrate good cause and should be denied or that, as an alternative, any extended testimony period should be limited to Mr. Tisdale's deposition and exclude the submission of notices of reliance by petitioner.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Cir. P. 6(b) and TBMP §509 (2nd ed., rev. 2004). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad

faith and the privilege of extensions is not abused. See, e.g., *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710 (Fed. Cir. 1991); *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 618 F.2d 776, 205 USPQ 888 (CCPA 1980); and *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992). A sufficiently detailed showing of time constraints may constitute good cause. See *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2d 1383 (TTAB 2001) (The press of other litigation matters may constitute good cause for granting an extension of testimony periods).

Here, respondent was apprised of the difficulty of scheduling the deposition of Mr. Tisdale weeks before petitioner's testimony period opened, and petitioner's motion describes in detail the obligations, including extensive travel, which made the scheduling difficult. Respondent's arguments regarding alternative ways that petitioner could have presented its case within the scheduled testimony period are irrelevant. Petitioner is permitted to present its case as it chooses so long as those choices comply with the Board's rules.

After review of the parties' arguments, the Board finds that petitioner has not been dilatory in seeking the extension, that petitioner has not abused the privilege of

extensions, and that respondent has indicated no specific prejudice, and we find none, which would result from the extension. Respondent's motion to extend testimony periods for forty-five days is hereby granted.

Respondent presents no support for the proposition that petitioner was, or should be, obliged to present its case in piecemeal fashion. Respondent's alternate request that petitioner be restricted to presenting only deposition testimony during any extended testimony period is denied.

MOTION TO QUASH

Insofar as petitioner's notice of testimony deposition of Mr. Tisdale, served June 6, 2005, specified a deposition date outside petitioner's testimony period, respondent's motion to quash is granted.

PHONE CONFERENCE

The parties have been advised by phone that this order would be posted on the Board's website by 2PM July 19, 2005. The parties are ordered to immediately confer by telephone on the scheduling of testimony deposition[s] to be conducted within the testimony dates reset by this order. In the event the parties agree on a schedule, there is no need to inform the Board.

In the event that no agreement on dates for deposition[s] is reached within three days of the mailing date of this order (2PM Friday, July 22, 2005), petitioner is ordered to so advise Board attorney Elizabeth Dunn at 571-272-4267 and both parties must be available for a telephone conference on this matter on Monday, July 25, 2005 at 11AM EST. The Board expects cooperation between the parties not only in discovery but in all stages of proceedings before the Board. See *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303 (TTAB 1987).

Trial dates are reset as follows:

THE PERIOD FOR DISCOVERY:	CLOSED
30-day testimony period for party in position of plaintiff to close:	July 28, 2005
30-day testimony period for party in position of defendant to close:	September 26, 2005
15-day rebuttal testimony period to close:	November 10, 2005

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.